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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,312	10/14/2005	Gunnar Nitsche	066340.0223	4052
21003	7590	12/12/2008	EXAMINER	
BAKER BOTTS L.L.P. 30 ROCKEFELLER PLAZA 44TH FLOOR NEW YORK, NY 10112-4498				FARAGALLA, MICHAEL A
ART UNIT		PAPER NUMBER		
2617				
			NOTIFICATION DATE	DELIVERY MODE
			12/12/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DLNYDOCKET@BAKERBOTTS.COM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/538,312	NITSCHE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MICHAEL FARAGALLA	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 August 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 14-28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 14-28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. This action is in response to the amendment filed by applicant on 08/22/2008.

This action is made **FINAL**.

### ***Claim Rejections - 35 USC § 112***

2. Rejection to claims 17-19, 21-23, and 25-28 under 112 second paragraph has been withdrawn due to applicant's amendment.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 14-28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 14, 16-20, 22-26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lescuyer et al (EP 1257141) in view of Gao et al (Patent number: US 7,096,022).

6. As to claim 14, Lescuyer et al. disclose automatically performing identification processes which identify usable connection options to different networks having different standards and frequency bands (Fig 4 and [0013]), wherein connection parameters which identify the standard with which a usable connection option is found are stored (Fig 4 and [0013]); selecting a usable connection option (Fig 4 and [0013]); and setting up a connection from the mobile station to the network via an access point after selection of connection parameters, wherein the connection is set up by the mobile station to the access point which is being communicated to via the standard for which the usable connection option has been selected (Fig 4 and [0013]).

Lescuyer et al. do not expressly disclose wherein a first standard is selected and a check is carried out of the usable connection options within this first standard, then a next standard is selected and a check is carried out of the usable connection options within this next standard.

However, Lescuyer discloses that the scan is conducted using information stored in the SIM card of the mobile station ([0013]). It would be cumbersome to have the mobile station switch parameters during the scan, so efficiency would dictate that the

mobile would first scan using a set of parameters for a first standard and then scan using a set of parameters for a second standard.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicants' invention was made to scan by first selecting a standard and determining whether any connections complying with that standard are usable.

However, Lescuyer does not specifically show that the mobile station is performing the steps of the method.

In related, Gao et al show that the mobile station is performing the steps of the method (column 5, lines 12-31; figure 4); (users actively choose an access network based on the user's own needs and can also occur in accordance with contracts with the service providers. The user's needs may include application QOS requirements, such as cellular networks for telephony and wireless local area networks (WLAN) for multimedia streaming. Other needs may include cost, security, and the like.

Heterogeneous networks exist to accommodate the different needs of the user).

Therefore, it would have been obvious to a person skilled in the art at the time the invention was made to incorporate the teaching of Gao et al into the teaching of Lescuyer in order to access a network based on the users needs (see paragraph column 5, lines 12-20).

As to claim 16, Lescuyer et al. disclose wherein selecting a usable connection option comprises manual selection ([0013], where having a user decide to switch network is "manual selection")

As to claim 17, Lescuyer et al. disclose wherein selecting a usable connection option comprises selecting the connection option which achieves the maximum data throughput between the mobile station and the communication network ([0013], where "the user decides to switch [networks] if the current download rate is too slow on the current system." This discloses selecting a connection which achieves the maximum data throughput.

As to claim 18, Lescuyer et al. disclose wherein an identification process and data storage of connection parameters which identify the standard with which usable connection option is found are carried out before logging on a connection with an access point (Fig 4 and [0013]).

As to claim 19, Lescuyer et al disclose wherein an identification process and data storage of connection parameters which identify the standard with which usable connection option is found are carried out while a connection exists to an access point (Fig 4 and [0013]).

As to claim 20, Lescuyer et al. disclose before the identification process is carried out, a current access point is signaled that the mobile station cannot receive data for an agreed time, and arriving data is buffered in the current access point ([0043-0044]).

As to claim 22, Lescuyer et al. disclose the automatic identification and the data storage of connection parameters which identify the standard with which usable connection option is found and updating processes are carried out within a time period in which no data is transmitted and during which the mobile station is not busy carrying out processes other than said identification, storage and/or updating processes that cannot be interrupted ([0013] and [0043-0044]).

As to claim 23, Lescuyer et al. disclose the identification and the data storage of connection parameters which identify the standard with which usable connection option is found and updating connection option processes are carried out periodically ([0005]).

As to claim 24, Lescuyer et al. disclose the identification of usable connection options is carried out by transmission of a signal to possible access points and by evaluation of the received signal or just by evaluation of the received signal ([0013]).

As to claim 25, Lescuyer et al. disclose the identification of usable connection option is carried out in a data transmission pause during an active connection to an access point ([0013]).

As to claims 26 and 28, Lescuyer et al. disclose in the event of a deterioration in the transmission quality or a connection failure to the current access point, after accessing the stored data of connection parameters which identify the standard with which usable connection option is found or another identification process, a connection change is made to an access point which ensures a better transmission quality (handover; [0002-0006]).

7. Claim 15 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lescuyer et al (EP 1257141) as applied to claim 14 in view of Gao et al and further in view of an official notice taken by the Examiner.

As to claim 15, Lescuyer et al. disclose selecting, but do not explicitly disclose selection under program control.

However, the examiner takes official notice that it is well known to provide a selection mechanism using program control because software is more flexible than hardware.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicants' invention was made to include selecting a usable connection option under program control to improve the flexibility of a system.

As to claim 27, Lescuyer et al. disclose switching to different standards and frequency bands, but do not explicitly disclose this switching is carried out under program control or by rebooting a processor.

However, the examiner takes official notice that it is well known to provide a switching mechanism under program control to improve the robustness of a system.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicants' invention was made to include switching to different standards and frequency bands under program control or by rebooting a processor in order to improve the robustness of a system.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL FARAGALLA whose telephone number is (571)270-1107. The examiner can normally be reached on Mon-Fri 7:30 am-5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Eng/  
Supervisory Patent Examiner, Art Unit 2617

/Michael Faragalla/  
Examiner, Art Unit 2617

12/06/2008